that state. I selected the MSA as the geographical unit because it is already used in the law and should discourage ''cherry picking'' without reducing coverage on a state-wide basis. Finally, if a company terminates coverage and a beneficiary is currently receiving treatment, this bill requires the HMO to provide 90 days of coverage to allow the patient to continue to receive such treatment. This will ensure that patients under active treatment will have a few additional months to make the transition to another doctor or health plan.

Mr. Speaker, what Medicare HMO's did in my district—and what they are doing across the country—is unreasonable and irresponsible. The Medicare HMO Improvement Act is a reasonable approach which will provide badly needed protection to older Americans. I invite my colleagues to join me as co-sponsors.

IN MEMORY OF HAL WALSH

HON. PETER DEUTSCH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1999

Mr. DEUTSCH. Mr. Speaker, I rise today to recognize and commemorate the many contributions Hal Walsh made to the Key West community. Hal was the executive director of Truman's Little White House Museum and a columnist for the Key West Citizen newspaper.

Hal came to Key West from New York City in 1993 after a career as a stock broker. His lifelong interest in American history drew him to the Truman Little White House Museum. In addition to his dedicated service as museum director, Hal was also an active member of the Lambda Democrats and was a founder of the Key West Gay and Lesbian Center. He never hesitated to keep me apprised of how politicians on every level of government were doing—right or wrong—regarding issues of concern to the gay community. He was an articulate and passionate advocate who was never afraid to speak his mind.

Hal's other affiliations include being first vice president of Old Island Restoration Foundation and a member of the Lower Keys Friends of Animals. His devotion to his cocker spaniels, Savannah and Sachem, rang clear in his weekly newspaper column which often included their antics.

A Key West Citizen editor Bernie Hun wrote, ''Hal Walsh was a big man in every sense . . . in generosity and spirit.'' He will be truly missed by those whose lives he touched.

MUNICIPAL BIOLOGICAL MONITORING USE ACT OF 1999

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1999

Mr. HEFLEY. Mr. Speaker, in this new Congress, I am again introducing the Municipal Biological Monitoring Use Act (''MBMUA'' or ''Biomonitoring Bill''). This bill amends the federal Clean Water Act (''CWA'' or ''Act''). I would respectfully request its consideration this year as separate legislation or in connection with other bills to amend the CWA.

The purpose of this legislation is to ensure that our nation's wastewater, stormwater and combined sewer facilities owned by local governments are not unfairly exposed to fines and penalties under the federal Clean Water Act when biomonitoring or whole effluent toxicity tests conducted at those facilities indicate an apparent test failure.

Similar legislation applicable to sewage treatment facilities was introduced in previous Congresses. In recent years, various offices of EPA have sought to apply WET test limitations to municipal separate storm sewer systems, combined sewer overflows, and other wet weather facilities. Therefore, as in the last Congress, this bill would also apply to wet weather facilities owned by local or state governments.

Enforcement of biomonitoring test failures is a concern of local governments nationwide. Where whole effluent toxicity is a NPDES permit limit, the limit is defined as a test method as provided in EPA regulations at 40 C.F.R. part 136. Any permit with whole effluent toxicity tests expressed as a discharge limit is subject to enforcement by EPA or a state delegated to implement the NPDES permit program, or under the Act's citizen suit provisions. Fines and penalties for such tests failures are up to $27,000 per day of violation. These tests are known, however, for their high variability and unreliability. Furthermore, because the source of WET at any given facility is usually not known until the tests are conducted, local governments are unable to take appropriate action to guarantee against test failure, and hence permit violation, before such violation occurs.

The bill we reintroduce today would retain the use of biomonitoring tests as a management or screening tool for toxicity. Our bill would, however, shift fine and penalty liability from liability for test failures to liability for failure to implement required procedures for identifying and reducing the source of WET when detected. In so doing, this legislation would in the long-run strengthen environmental protection by removing the enforcement disincentive for its use.

BACKGROUND

EPA or delegated states regulate wastewater discharges from sewage treatment, separate storm sewers and combined sewer systems through the NPDES permit program. NPDES permits include narrative or numeric limitations on the discharge of specifically named chemicals. Treatment facilities can be and are designed and built in order to assure compliance with such chemical specific limitations before a violation occurs. Compliance is determined by conducting specific tests for these specifically known chemicals.

NPDES permits may also include limits to control the unspecified, unexpected, and unknown toxicity of the sewage plant effluent which is referred to as whole effluent toxicity or WET. The authority for biomonitoring tests was added to the Clean Water Act by the 1987 amendments. Since then, EPA has issued regulations describing biomonitoring or WET test methods under Part 136, permit requirements under Part 136, and enforcement policies for the use of WET tests as a monitoring requirement or as a permit effluent limitation at POTWs. Compliance with WET as limits is determined by the results of biomonitoring or WET tests.

Biomonitoring or WET tests are conducted on treatment plan effluent in laboratories using small aquatic species similar to shrimp or minnows. The death of these species or their failure to grow or reproduce as expected in the laboratory is considered by EPA to be a test failure and therefore a permit violation.

Where such tests are included in permits as effluent limits, these test failures are subject to administrative and civil penalties under the CWA of up to $27,000 per day of violation. Test failures also expose local governments to enforcement by third parties under the citizen suit provision of the Act.

WET test failures can also trigger toxicity identification and reduction evaluations that include additional testing, thus exposing local governments to additional penalties if these additional tests are expressed as permit limits and also fail. The use of biomonitoring test failures as the basis for fines and policies is the issue which this bill addresses.

WET TEST ACCURACY CANNOT BE DETERMINED

EPA recognizes that the accuracy of biomonitoring tests cannot be determined. An October 18, 1995 FEDERAL REGISTER preamble document issued by the Agency in promulgating test methods determined that: ''Accuracy of toxicity test results cannot be ascertained, only the precision of toxicity can be estimated.'' (EPA, Guidelines for Establishing Test Procedures for the Analysis of Pollutants, 40 C.F.R. Part 136, 60 FR 53535, October 16, 1995.)

While the Agency cannot determine the accuracy of such tests, EPA still requires local governments to certify that WET test results are ''true, accurate, and complete'' in Discharge Monitoring Reports (''DMRs'') required by NPDES permits. This is a true Catch–22 requirement.

Laboratory biomonitoring tests are known to be highly variable in performance and results. Aquatic species used as test controls may die or fail to reproduce normally during test performance through no fault of the POTW or its effluent. False positive tests occur frequently. Yet test failure is the basis for assessing administrative and civil penalties.

EPA also recognizes that WET is episodic and usually results from unknown sources. These unknown sources can include synergistic effects of chemicals, household products such as cleaning fluids or pesticides, and illegal discharges to sewer systems. Even a well-managed municipal pretreatment program for industrial users cannot assure against WET test failures.

The inaccuracy and high variability of WET tests is the basis of a judicial challenge to EPA Part 136 WET test methods brought by the Western Coalition of Arid States (''WESTCAS'') in 1996. This litigation was settled by the Agency in 1998 but is still under court jurisdiction and supervision. Under the settlement, EPA agree to conduct additional tests as to the validity of WET testing and the test methods in Part 136. The responsibility for this new effort to justify the technical basis of WET testing is split between the EPA Office of Research and Development and the EPA Office of Water.

Scientific method blank or blind testing for WET tests was conducted by WESTCAS in 1997 preceding the settlement with EPA. These blind tests were conducted by a series of qualified laboratories throughout the United States. The purpose of these blind tests was to quantify the natural level of biological variability in test organisms and the variability inherent in the test procedures themselves.